

ENVIRONMENTAL PROTECTION  
LAND USE MANAGEMENT  
LAND USE REGULATION PROGRAM

Freshwater Wetlands Protection Act Rules

Proposed New Rules:	N.J.A.C. 7:7A-12.2
Proposed Amendments:	N.J.A.C. 7:7A-4.3, and 7.2
Authorized By:	Bradley M. Campbell, Commissioner, Department of Environmental Protection
Authority:	N.J.S.A. 13:9B-1 et seq.
Calendar Reference:	See Summary below for explanation of exception to calendar requirement

DEP Docket Number:

Proposal Number: 2002:

A Public hearing concerning the proposal will be held from 1:00 P.M. to the close of comments on:

Wednesday, November 13, 2002  
DEP Public Hearing Room  
401 East State Street  
Trenton, NJ

Submit written comments by December 6, 2002 to:

Gary J. Brower, Esq.  
Attn: DEP Docket Number:  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
P.O. Box 402  
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on 3½ inch diskettes as well as on paper. The Department will be able to upload the comments onto its office automation equipment and will avoid having to retype the comments.

The Department will use the paper version of the comments to ensure that the uploading was

accomplished successfully. Submittal of comments on diskette is not a requirement. The Department prefers Microsoft Word 6.0 or above; however, other word processing software that can also be read or used by Microsoft Word 6.0 is acceptable. MacIntosh formats should not be used.

The proposal can be viewed or downloaded on the Land Use Regulation Program website at <http://www.state.nj.us/dep/landuse>. A copy of the proposal is available by e-mailing the Department at [lurweb@dep.state.nj.us](mailto:lurweb@dep.state.nj.us), or by calling the Department at (609) 984-3444.

### **Summary**

The Department of Environmental Protection is proposing new rules and amendments to the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A. Both the proposed new rules and the amendments relate to the identification and consideration of historic resources in the Freshwater Wetlands Protection Act program permitting process. As the Department has provided a 60 day comment period on this notice of proposal, this proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

At N.J.A.C. 7:7A-4.3(b) and N.J.A.C. 7:7A-7.2(b), the Department is proposing to amend the standard conditions for general and individual permits, respectively, to reflect in greater detail the current procedures for freshwater wetlands permits for properties containing historic resources. While the intent of the rules is to avoid authorizing projects that will adversely affect historic resources, there are circumstances when adverse impact cannot be avoided and some impact would be acceptable. For example, when the discovery of an archaeological (below ground) resource is significant for its ability to yield important information, then data recovery and professional reporting benefits the larger goals of historic preservation and may be preferable to preservation in place. Another example would be an above ground resource that

may still have the ability to convey its period of significance, however, the cost of rehabilitation would not be prudent or feasible. The resource might be a type that is broadly represented on the New Jersey and National Registers of Historic Places and therefore its preservation would not substantially add to our body of knowledge. In those and similar instances, a condition is added to the permit, after coordination between the Land Use Regulation Program (LURP) and the Historic Preservation Office (HPO), to minimize or mitigate adverse effects. The Department's LURP implements the Freshwater Wetlands Protection Act rules (N.J.A.C. 7:7A) while the HPO, also in the Department, administers the rules concerning the preservation of the State's historic, architectural, archaeological, engineering, and cultural heritage in accordance with the Procedures Concerning the New Jersey Register of Historic Places, N.J.A.C. 7:4. The amended language recognizes the alternative of conditional approval, subject to the already stated requirement that a permit will be denied if serious historic preservation concerns cannot be properly and sufficiently mitigated

Proposed N.J.A.C. 7:7A-12.2(l) describes the coordination process between LURP and HPO. As part of the readoption of the Procedures Concerning the New Jersey Register of Historic Places, N.J.A.C. 7:4, proposed in the September 16, 2002 New Jersey Register, the Department has proposed amendments codifying the role of the HPO in coordination and consultation with the Land Use Regulation Program and other Department programs needing such technical services.

In 1993, the State of New Jersey was granted the authority by the U.S. Environmental Protection Agency (EPA) to implement the Freshwater Wetlands Protection Act program in place of the Federal Clean Water Act Section 404 program throughout most of the State. In

those parts of the State where the State program did not replace the Federal program, both the Federal and State wetlands permitting programs are in force.

In order for the State to retain the authority granted to it by the EPA, the Department's program has to be as stringent as the Federal program. The Federal 404 permitting program requires that historic and archaeological resources be identified, that potential impacts to historic and archaeological resources be considered in permitting decisions on freshwater wetlands permit applications, and that feasible alternatives and potential mitigation also be considered. LURP therefore reviews applications for freshwater wetlands permits and coordinates with HPO on these issues because HPO has the relevant expertise in this area. EPA retains oversight of the permitting process by categorizing as a "major discharge" those discharges within critical areas, including sites identified or proposed under the National Historic Preservation Act. All major discharges are subject to the EPA review process established pursuant to N.J.A.C. 7:7A-12.2. See also the definition of "major discharge" at N.J.A.C. 7:7A-1.4.

In the proposed rules at N.J.A.C. 7:7A-12.2(l), the Department has established a checklist of wetlands permit application categories that present a high probability of the presence of historic and archaeological resources listed or eligible for listing on the New Jersey or National Register of Historic Places. Projects falling into one or more of the categories are identified immediately upon receipt of the application, and HPO will review and comment regarding the presence or absence of historic resources onsite, and provide LURP with recommendations on the issues of alternatives and mitigation.

The first checklist category, proposed N.J.A.C. 7:7A-12.2(l)1, is applications for proposed projects within project areas containing known historic or archaeological resources, based upon information contained within the application, or as identified on copies of historic

property maps. Upon receipt of freshwater wetlands permit applications, during the administrative completeness review process, the application is compared to the maps. Applications containing project areas that overlap with areas designated on the historic and archaeological resource maps will be reviewed by HPO.

The second category, proposed N.J.A.C. 7:7A-12.2(l)2, is applications containing a project area exceeding 20 acres in size which contains, or is located within 250 feet of, a permanent water body (for example, wetlands, pond, lake, river or perennial stream). Historically, Native and early Americans located their camps and settlements in the vicinity of permanent water bodies. Experience has shown that previously unidentified locations of artifacts of such people are more likely to be discovered on larger sites and in close proximity to a permanent water body.

The third category, proposed N.J.A.C. 7:7A-12.2(l)3, is applications containing a project map, photographs, or other information, or observations made during a site visit, indicating that there are buildings, structures, or ruins over 50 years old within the project area that could potentially be affected by the proposed project. Department staff have been trained to look for and make note of potentially historic structures when conducting their field investigations for wetland permitting. They may discover a resource that the owner/applicant was unaware would qualify and to date is not listed. Upon such discovery, the project will be reviewed by HPO.

The fourth category, proposed N.J.A.C. 7:7A-12.2(l)4, is applications for new, replacement, reconstructed, or rehabilitated bridges or culverts. Many of these structures have already been identified on the Department's resource maps. However, because these projects are generally undertaken by a public entity with Federal assistance, they may also require review pursuant to Section 106 of the National Historic Preservation Act, or a project authorization

from the Historic Preservation Office if their actions will affect a property which is listed on the New Jersey or National Register of Historic Places. See additional discussion regarding these other processes in the Summary discussion to follow.

The final checklist item at N.J.A.C. 7:7A-12.2(l)5 is applications for which letters are received from concerned citizens or others indicating the possible presence of historic properties within or adjacent to the project area. Citizens frequently have knowledge of local historic resources that have not been listed but that may be eligible for listing. Consequently, it is important for the Department to be able to obtain public comment and act on the information. These applications will therefore be reviewed by HPO.

Federal agencies are required to take into account the effects of their undertakings on historic properties, pursuant to Section 106 of the National Historic Preservation Act. Consequently, applicants who will be seeking Federal assistance, permits, licenses, or other Federal approvals for the same project that is the subject of the freshwater wetlands permit application, are also required by the National Historic Preservation Act (36 USC 470) to undergo a Section 106 review conducted by the Federal agency to whom they are applying. For example, the State Department of Transportation would be required to complete a Section 106 review for projects obtaining Federal transportation funding. Sometimes this procedure has already been concluded by the time the applicant applies for a State freshwater wetlands permit. Other times the applicant has not yet pursued the needed Federal funding or approval and therefore the application has not yet been through the Section 106 review. Because the Section 106 review addresses the same resources as the procedure administered by the State, applicants will be able to coordinate their Section 106 review process directly with the HPO. To facilitate this, the Department has proposed at N.J.A.C. 7:7A-12.2(m) that the applicant supply with the State

freshwater wetlands permit application a copy of the consultation comments provided by the HPO (which is also the staff of the designated State Historic Preservation Officer (the Commissioner) known in the Federal system as the State Historic Preservation Office or SHPO) under Section 106 of the National Historic Preservation Act, together with a statement detailing how the comments have been incorporated into the project. The Department will consider that information as a part of its review under this Chapter. The Department is also requiring at N.J.A.C. 7:7A-12.2 (m) that applicants who intend to pursue Federal approvals but have not yet done so at the time of application for State permits, consult directly with the HPO under the Federal Section 106 program. By working with HPO, the applicant may be able to streamline the overall permitting process by obtaining any required Section 106 review prior to the State freshwater wetland permit review.

Similarly, public entities in New Jersey, including the State, counties, municipalities and agencies and instrumentalities thereof, are required pursuant to N.J.S.A. 13:1B-15.128 et seq. to obtain a project authorization from the Department if their actions will affect a property which is listed on the New Jersey Register of Historic Places. The project authorization process is similar in some ways to the Federal Section 106 process. Therefore, proposed new N.J.A.C. 7:7A-12.2(n) provides that public entities which need such project authorization, in addition to a freshwater wetlands permit, provide with their freshwater wetlands application, a project authorization. Like proposed N.J.A.C. 7:7A-12.2(m), the intent of this provision is to streamline the process.

### **Social Impact**

The proposed new rules will have a positive social impact by providing a coordinated process for the Department to review proposed impacts to freshwater wetlands and potential

impacts to historic and archaeological resources as early in the permit review process as possible. The coordinated process with the Historic Preservation Office will assist the Land Use Regulation Program to timely identify, protect and preserve, the State's historical, architectural, archaeological, engineering and cultural heritage, while reviewing applications for Statewide general or Individual permits. The proposed amendments will additionally have a positive social impact because they outline a coordinated process for public applicants who need to obtain more than one review relating to historic resources, and because they clarify the Department's authority to issue conditional permits in those cases where adverse impacts to historic or archaeological resources cannot be entirely avoided.

### **Economic Impact**

The Department anticipates that the proposed new rules and amendments will have no negative or positive economic impact since they codify an internal Department coordination process which is already in place. The Department recognizes that there may be a economic impact for those applicants whose properties are identified as requiring additional site investigation to assist the Department in determining the potential for adverse effects.

For public agencies, the application to the Historic Preservation Office for project authorization for any undertaking that constitutes an encroachment upon or that will damage or destroy a property listed in the New Jersey Register is straightforward, and is not complicated to complete. The Department estimates that for most undertakings, the application can be completed by a project manager for a State, county or municipal agency in about one-half of a working day, without professional assistance. Required attachments (plans, maps, photographs)



are usually already available, hence costs are primarily for reproduction and postage. Under such circumstances, an application might cost between \$250 and \$1,000 to prepare. If the attachments must be prepared, the Department estimates that it will cost approximately \$750 to \$2,500 to prepare the application.

For large or complex undertakings, the applying public agency may find it more efficient to have an architect, engineer or historic preservationist prepare the application, and make a brief presentation and answer questions at the Historic Sites Council meeting. For such professionally assisted applications, the Department estimates that the cost to the applicant would range from approximately \$2,000 to \$5,000. The Department estimates that a cost for a structural assessment for a building proposed for demolition might cost \$3,500 - \$8,000, although in many cases, such a document would have already been prepared even if the property proposed for demolition were not listed in the New Jersey Register of Historic Places.

Though public hearings on applications are rare, if such a hearing were called by the Commissioner, the applicant likely would incur costs of approximately \$300 to \$700 for transcription and public notice. All of these impacts already exist by virtue of New Jersey Register of Historic Places Act (N.J.S.A. 13:1B-15.131) and Procedures Concerning the New Jersey Register of Historic Places (N.J.A.C. 7:4-7).

In those cases where a private applicant is required to perform an assessment of a site 20 acres or larger, a background investigation with field inspection is estimated to cost around \$5,000. If the background investigation and field inspection indicates that the site contains listed or eligible historic or archaeological resources that may be adversely affected by construction activities, or that the project site is likely to hold undiscovered, eligible, archaeological resources, then a more thorough field investigation would be recommended at a cost of

approximately \$15,000. Such archaeological investigation has been required in appropriate cases for a LURP permit since the Department first assumed the program.

During the most recent 2-year time period for which complete records are available, January 2000 through December 31, 2001, the Department received 2,894 freshwater wetlands permit applications. Of those, 105 were referred to the HPO for determination of potential impacts to historic or archaeological resources. Of the 105 applications referred to HPO, 20 were required to conduct a background investigation with field inspection. None of those applicants were required to conduct the more thorough field investigation.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 c. 65), require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards analysis. As previously described, the State of New Jersey's Freshwater Wetlands Protection Act program replaces the Federal Clean Water Act Section 404 program (33 U.S.C. 1344) throughout most of the State. Consequently, the State's implementing rules replace the Army Corps of Engineers (ACOE) Regulations for implementation of the Section 404 program. This authority was granted to the State by the EPA and in order to retain this authority, the State's rules must remain as stringent as the rules governing Section 404. The proposed regulations address the review of historic resources as part of the review for a freshwater wetlands permit because the Land Use Regulation program must perform such reviews to be as stringent as the Federal permitting program. The proposed amended language at N.J.A.C. 7:7A-4.3 and 7.2 and the proposed new

description of "effects" at 12.2(l) is similar and equal in stringency to the terminology used by the ACOE in its regulations in Appendix C to 33 CFR 325-Procedures for the Protection of Historic Properties.

The proposed amendments at N.J.A.C. 7:7A-4.3 and 7.2 include a reference to properties listed on or eligible for the New Jersey or National Register of Historic Places. While the State program at N.J.A.C. 7:4-7 is limited to properties on the State Register of Historic Places, because the State and Federal programs use the same criteria for listing, and properties approved for listing in the New Jersey Register of Historic Places are automatically eligible for Federal consideration, the Department has found that any differences in the two Registers are negligible.

N.J.A.C. 7:7A-12.2(l) proposes to identify properties with a high probability of the presence of historic and archaeological resources using listed criteria. The ACOE uses a similar process in Appendix C to 33 CFR 325 which excludes parcels with low probability of such resources. The difference in methodology is due to the fact that the ACOE regulations apply nationwide where conditions vary greatly, while the State process has been tailored based upon knowledge of where these resources most likely occur in New Jersey. In addition, because the scope of the State's Freshwater Wetlands Protection Act program is greater, it is likely that the State Program will successfully identify as many historic resources using its own methodology.

The proposed new rules at N.J.A.C. 7:7A-12.2(m), are equal in stringency to the Federal requirements for the assessment of effects on historic properties since they allow the Department to review and incorporate the findings of any required Federal Section 106 (16 U.S.C. 470(f)) historic review procedure into the State's permitting process for those applicants that must seek both State and Federal approvals.

The proposed new rules at N.J.A.C. 12.2(n), are equivalent to the Federal requirements for the assessment of effects to historic properties. The purpose of the rule is to obtain information about historic resources that may have already been addressed through the State's process that is similar to a Federal Section 106 review process to avoid the need to replicate that information to satisfy the freshwater wetlands permitting requirements.

Therefore, the proposed new rules and amendments, substantively, are equal in stringency to the Federal regulations implemented by the ACOE for historic property protection. However, the scope of the proposed new rules and amendments will be greater and apply to more projects because the Department's freshwater wetlands permitting program regulates more activities and protects more natural features than the Federal 404 program. This greater stringency is required by the Freshwater Wetlands Protection Act, and provides an appropriately greater level of protection for crucial resources in the most densely populated state in the nation.

### **Environmental Impact**

The proposed new rules and amendments will have a positive environmental impact by clarifying the means used by the Land Use Regulation Program to coordinate with the Historic Preservation Office to continue to encourage the protection of historic resources individually or as a district, and the state's architectural, archaeological, engineering and cultural heritage against destruction and loss of integrity through inappropriate alterations or demolition.

### **Jobs Impact**

The proposed new rules and amendments are the codification of existing procedures for coordination between the Land Use Regulation Program and the Historic Preservation Office to

identify and consider historic and archaeological resources. To the extent that the rules may result in the need in some cases for site investigation, historic rehabilitation and restoration projects, it is expected that the rules will enhance long term job possibilities for the those in the construction trades, for historians, architects, and engineers specializing in historic preservation and for archaeological consultants. There are no job impacts to the Land Use Regulation Program because of this proposed readoption with amendments.

### **Agriculture Industry Impact**

Pursuant to N.J.S.A. 52:14B-4, the Department evaluated this rulemaking to determine the nature and extent of the impacts of the proposed new rules and amendments on the agriculture industry. Since ongoing farming, ranching and silviculture are exempt from the rules, and few new farms are being established in New Jersey, the proposed amendments are not likely to have any measurable effect upon the agriculture industry.

### **Regulatory Flexibility Analysis**

The proposed new rules and rule amendments better codify the existing procedure for the identification and consideration of historic resources in the Freshwater Wetlands Protection Act rules and apply to any public or private applicant seeking a freshwater wetlands permit to perform a regulated activity. It is impossible to estimate the number of "small businesses" as defined in the New Jersey Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.) that will be affected. In order to comply with these rules, the small businesses with properties that fall into

one of the checklist categories discussed in the summary above, may have to satisfy certain requirements of the Historic Preservation Office. In so doing, small businesses may need the services of professionals in the disciplines of architecture, history, architectural history, prehistoric archaeology or historic archaeology. It is expected that the initial capital costs and the annual cost of compliance for each business will be minimal. In developing the rule amendments, the Department has balanced the need to protect wetland properties, containing historic resources, against the economic impact of the proposed rule on small businesses and has determined that to minimize the impact of the rule would endanger the protection and preservation of historic resources on properties containing wetlands. Because the coordination procedures are already in effect, the values and functions of wetlands are important to all persons, and these proposed amendments are necessary to maintain appropriate freshwater wetlands protection and to retain assumption of the Federal 404 program, no lesser requirements for small businesses are provided.

### **Smart Growth Impact**

Executive Order No. 4(2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 2:14b-4(A) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed rules' impact on smart growth and the implementation of the State Plan.

Encouragement of redevelopment, repair and rehabilitation of existing facilities and the preservation of natural, environmental, coastal, historic and cultural resources are goals of both Smart Growth and the State Plan. Additionally, conservation of the State's natural resources is one of the overall goals of the State Plan.

The freshwater wetlands regulations overall are consistent with the law and policy of New Jersey to promote smart growth and to reduce the negative effects of sprawl and disinvestments in older communities because they discourage development of environmentally sensitive wetlands and wetland buffers, which are vital to the health and well-being of the present and future citizens of the State. The preservation of historic resources is also consistent with smart growth because it can be a catalyst for economic revitalization in cities and older communities across the nation. Consequently, the proposed new and amended regulations which describe the interaction between the Freshwater Wetlands Protection Act program and the Historic Preservation Office strongly comport with the goals of smart growth and implementation of the State Plan described in Executive Order No.4.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 4 GENERAL PROVISIONS FOR GENERAL PERMITS

##### 7:7A-4.3 Conditions that apply to all General Permit Authorizations

(a) No change.

(b) The following conditions apply to all activities conducted under the authority of a general permit

1.- 4. No change.

5. The activity shall not adversely affect properties which are listed or are eligible for listing on the New Jersey or National Register of Historic Places[.] unless the applicant demonstrates to the Department that the proposed activity avoids or minimizes impacts to the maximum extent practicable or the Department determines that any impact to the affected property would not impact the property's ability to continue to meet the criteria for listing at N.J.A.C. 7:4-2.3 or otherwise negatively impact the integrity of the property or the characteristics of the property that led to the determination of listing or eligibility. The Department shall not issue a conditional permit if it finds that the mitigation proposed is inadequate to compensate for the adverse affect. Any permit for an activity which may adversely affect a property listed or eligible for listing on the New Jersey or National Register of Historic Places shall contain conditions to ensure that any impact to the property is minimized to the maximum extent practicable and any unavoidable impact is mitigated. If the permittee, before or during the work authorized, encounters a probable historic property that may be eligible for listing in the New Jersey or National Register, the permittee shall immediately notify the Department and proceed as directed;

6.-15. No change.

(c) – (f) No change.



## SUBCHAPTER 7 INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS

### 7:7A-7.2 Standard requirements for all individual permits

(a) No change.

(b) The Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity:

1.-8. No change.

9. Will not adversely affect a property which is listed or is eligible for listing on the New Jersey or National Register of Historic Places[.] unless the applicant demonstrates to the Department that the proposed activity avoids or minimizes impacts to the maximum extent practicable or the Department determines that any impact to the affected property would not impact the property's ability to continue to meet the criteria for listing at N.J.A.C. 7:4-2.3 or otherwise negatively impact the integrity of the property or the characteristics of the property that led to the determination of listing or eligibility. The Department shall not issue a conditional permit if it finds that the mitigation proposed is inadequate to compensate for the adverse affect. Any permit for an activity which may adversely affect a property listed or eligible for listing on the New Jersey or National Register of Historic Places shall contain conditions to ensure that any impact to the property is minimized to the maximum extent practicable and any unavoidable impact is mitigated. If the permittee, before or during the authorized work, encounters a probable historic property that has not been listed or determined eligible for listing on the New Jersey or National Register, but which may be eligible for listing [in] on the New Jersey or National

Register, the permittee shall immediately notify the Department and proceed as directed by the Department;

10.-14. No change.

(c) No change.

## SUBCHAPTER 12 DEPARTMENT REVIEW OF APPLICATIONS

7:7A-12.2 USEPA Review.

(a)-(k) No change.

(l) The Department shall identify all wetland permit applications for proposed projects that may affect properties which are listed, or are eligible for listing, on the New Jersey or National Register of Historic Places. In accordance with N.J.A.C. 7:4-8.1(a), an "effect" on "property which is listed or is eligible for listing on the New Jersey or National Register of Historic Places" can be direct or indirect and occurs whenever any aspect of the project causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualified a historic property to meet the criteria of evaluation for inclusion in the New Jersey or National Register.

Applications reflecting any of the following characteristics shall be deemed to present a high probability of the presence of historic and archaeological resources, requiring assessment:

1. Proposed projects within project areas containing known historic or archaeological resources, based upon information contained within the application, or as identified on copies of historic property maps prepared by the Department;
2. Proposed projects containing a project area exceeding 20 acres in size which includes a permanent water body (for example wetlands, pond, lake, river or perennial stream) or is located within 250 feet of a permanent water body;
3. Proposed projects for which available maps, photographs, or other information, or observations made during a site visit, indicate the presence of buildings, structures, or ruins over 50 years old within the project area that could potentially be affected by the proposed project;
4. Proposed projects including new, replacement, reconstructed, or rehabilitated bridges or culverts; and
5. Proposed projects on which letters are received from concerned citizens or others indicating the possible presence of historic properties within or adjacent to the project area.

(m) Applicants who are or will be pursuing Federal assistance, permits, licenses, or other approvals for the project that is the subject of the freshwater wetlands permit application, shall either:

1. Supply a copy of the consultation comments provided by the Department's Historic Preservation Office (HPO) in its role as staff to the Federally designated State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act, together with a statement detailing how the comments have been incorporated into the project, with the State freshwater wetlands permit application. The Department will consider that information as a part of its review under this Chapter; or
  2. If the applicant has not yet begun the National Historic Preservation Act Section 106 process at the time of application for a State freshwater wetlands permit, the applicant shall consult directly with the Department's Historic Preservation Office (HPO) in its role as staff to the Federally designated State Historic Preservation Officer (SHPO) to satisfy the requirements of that Federal law and implementing regulations.
- (n) Public entities that are or will be pursuing a project authorization application, pursuant to N.J.A.C. 7:4-7 for the project that is the subject of the freshwater wetlands permit application shall comply with either 1. or 2. below. For the purposes of this subsection, "public entities" means the State, County, Municipality, or an agency or instrumentality thereof:
1. If the public entity has received a project authorization from the Department pursuant to N.J.A.C. 7:4-7 prior to applying for a State freshwater wetlands permit, a copy of the project authorization shall be submitted with the permit application. The Department will consider that authorization as a part of its review under this Chapter; or

2. If the public entity has not yet begun the process for obtaining a project authorization pursuant to N.J.A.C. 7:4-7 at the time of application for a State freshwater wetlands permit, the applicant shall consult directly with the Department's Historic Preservation Office to initiate the project authorization process at the same time as the permit application is processed.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purpose and expected consequences of these proposed amendments, I hereby authorize this proposal.

\_\_\_\_\_  
Date

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BRADLEY M. CAMPBELL  
Commissioner